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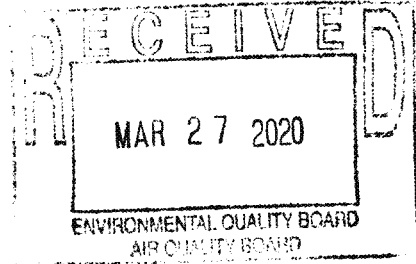
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March 26, 2020

Jackie Shultz, Clerk
West Virginia Environmental Quality Board
601 57th Street, SE
Charleston WV 25304



Re: Jefferson County Foundation, Inc., et al. v. WVDEP

Dear Ms. Shultz:

Please find enclosed an original and two (2) copies of a **NOTICE OF APPEAL** for filing in the above-captioned matter.

Thank you for your time and attention to this matter.

Very truly yours,

Christopher P. Stroeck, Esq.

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**JEFFERSON COUNTY FOUNDATION, INC.,
CHRISTINE L. WIMER, KAREN MICHELLE FREER,
and GAVIN PERRY,**

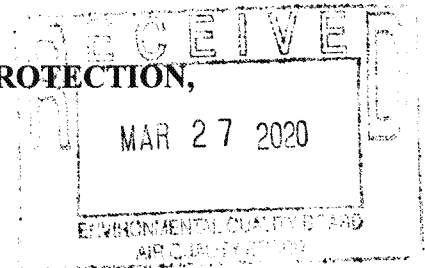
Appellants,

v.

Appeal No. _____

**KATHY EMERY, ACTING DIRECTOR,
DIVISION OF WATER & WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,**

Appellee.



NOTICE OF APPEAL

Action Complained Of: The Appellants, Jefferson County Foundation, Inc., Dr.

Christine L. Wimer, Ms. Karen Michelle Freer and Mr. Gavin Perry, by and through counsel, Christopher P. Stroeck, Esq. and the law firm of Arnold and Bailey, PLLC respectfully represent that they have been aggrieved by the issuance of General Permit Registration No. WVR108876 to Roxul USA, Inc. ("Rockwool"), to operate under General Permit No. WV0115924 to discharge stormwater associated with construction activities, by the West Virginia Department of Environmental Protection ("DEP"), acting through its Division of Water & Waste Management, on February 25, 2020. *See* Notice of Registration attached hereto as Exhibit B, which should be read to include all supporting documentation referenced in the Notice but not provided at this time.

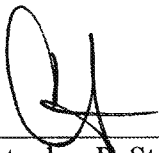
Appellants assert that the procedural defects in issuing the subject permit registration to Rockwool denied the Appellants and others notice and opportunity to comment, which would have allowed Appellants to raise other substantive issues below. Appellants further assert that the registration was issued in violation of certain applicable regulations for enforcing and

implementing the federal National Pollutant Discharge Elimination System ("NPDES") standards, and as a result, denied the Appellants and other citizens of Jefferson County their rights under the NPDES program. The denial of those rights has resulted in substantive risks to the groundwater of Jefferson County, yet unaddressed by the DEP.

Relief Requested: The Appellants therefore pray this this matter be reviewed and that the Board grant the following relief: (1) vacate and remand the permit registration for Rockwool, as it is contrary to West Virginia and federal law; (2) upon request, order that Rockwool stop work until the issue of stormwater management can be appropriately reviewed; and (3) provide all other necessary and appropriate relief.

Specific Objections: The Specific Objections to the action, including questions of fact and law to be determined by the Board, are set forth in detail in separate numbered paragraphs and attached hereto as Exhibit A.

Dated this 26th day of March, 2020.



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APPELLANTS
By Counsel

EXHIBIT A

The Parties

1. Plaintiff Jefferson County Foundation, Inc. ("JCF") is a West Virginia 501(c)(3) Non-Profit Corporation, formed for the purpose of preserving and protecting the quality of life for all Jefferson County, West Virginia residents. JCF has a primary business address of P.O. Box 460, Ranson, West Virginia, 25438.
2. JCF educates and advocates for effective and accountable government, sustainable development, and the protection of health, heritage, and the environment. It has a current priority focus of ensuring the accountability of all government entities that are involved in and responsible for the location, construction, permitting, and operation of the proposed Rockwool industrial facility in Jefferson County.
3. JCF has a Board of Directors consisting of three (3) members, who all own real property in Jefferson County, West Virginia. This Appeal is being brought by the Directors, on behalf of the organization, in both their individual capacities as property owners and organizational capacities as Directors.
4. Dr. Christine L. Wimer owns real property in Jefferson County, West Virginia, where her property value and groundwater source may be impacted by the adverse groundwater release impacts from Rockwool. Dr. Wimer's property is less than four (4) miles from the Rockwool site.
5. Ms. Karen Michelle Freer owns real property in Jefferson County, West Virginia, where her property value and groundwater source may be impacted by the adverse groundwater release impacts from Rockwool. Ms. Freer's property is less than one (1) mile from the Rockwool site.

6. Mr. Gavin Perry owns real property in Jefferson County, West Virginia, where his property value and groundwater source may be impacted by the adverse groundwater release impacts from Rockwool. Mr. Perry's property is less than one (1) mile from the Rockwool site.

7. The West Virginia Department of Environmental Protection ("DEP") is a government agency of the State of West Virginia. The challenged permit was issued by the DEP's Division of Water & Waste Management, by Kathy Emery, P.E., Acting Director, and has a primary address of 601 57th Street SE, Charlestown, West Virginia, 25304.

Facts and Procedural History

8. On 12/05/12, the Construction Stormwater General Permit was issued by the DEP (WV/NPDES Water Pollution Control Permit No. WV 0115924; the "2012 Permit"), and went into effect on 01/04/13. The 2012 Permit remained in effect through 2017, was extended through 2019 before being replaced by the revised 2019 Permit, and regulated stormwater associated with construction and development activities by varying industries and businesses.

9. The 2012 Permit provides certain conditions under which all registered entities are required to comply.

10. On 07/31/17, Rockwool submitted its initial site registration application for coverage under the 2012 Permit for control of stormwater associated with construction activities at its site located in Ranson, West Virginia.

11. On 08/01/17, the DEP informed Rockwool that they needed to be an authorized and registered state business prior to applying for a DEP permit registration.

12. On 8/02/17, Rockwool registered its business with the West Virginia Secretary of State's Office.

13. On 10/06/17, Rockwool resubmitted its application for registration coverage under the 2012 Permit.

14. No public notice or comment period was provided for at that time because the information provided by Rockwool to the DEP on “limit of disturbance” (<100 acres at an applied-for acreage of 98.9) and “duration of construction” [<1 year at an applied-for duration of seventeen (17) weeks] did not trigger a requirement for public comment. The failure to provide public comment denied the public the opportunity to point out fatal flaws in the siting of the plant, including but not limited to the existence of Karst topography and the likelihood that sinkholes would impact the construction site and present significant risk to the waters of Jefferson County.

15. On 10/17/17, the DEP requested certain technical corrections be made in Rockwool's registration application. Notwithstanding that this review process typically takes months to complete, the DEP finished its review in eleven (11) days. The only technical corrections requested by the permit reviewer consisted of the following three items: (1) revise Section 5.1 of the Storm Water Pollution Prevention Plan to include the sediment basins; (2) provide an ArcGIS shape file (.shp) or in an AutoCAD drawing (.dwg) in World Geodetic System (WGS) 84 identifying the LOD; and (3) provide a phase map showing the worst-case scenario during Phase 1 construction. The DEP knew or should have known that the LOD was not accurate, but that the Rockwool acreage was over the 100-acre threshold, and the construction would take more than seventeen (17) weeks, and thus trigger public notice and comment.

16. On 10/18/17, Rockwool re-submitted their application for coverage under the 2012 Permit.

17. On 10/19/17, the DEP issued Rockwool its registration under the 2012 Permit for the discharge of stormwater associated with its construction activities.

18. It is important to note that Rockwool was not identified as a business entity to the general public of Jefferson County until at the earliest 11/22/17, in a public notice regarding an air permit; but not identified in any meaningful way until the summer of 2018. Until that time, it was identified publicly only as "Project Shuttle," with no business description.

19. On 9/28/18, Rockwool applied to the DEP for reissuance of its registration under the 2012 Permit. Notwithstanding that public comment is required by a condition of the general permit for site work that extends beyond one (1) year, no public notice and comment period was provided for in the renewal application.

20. In the meantime, the DEP issued a Draft Revised Construction Stormwater General Permit. Public comment was open from 09/05/18 until 10/19/18, and a public hearing was held on 10/19/18.

21. On 10/02/18, the DEP sent a letter to Rockwool requesting that a sinkhole remediation plan to be submitted by 10/25/18. The letter cited the Groundwater Protection Act 22-12 and noted that "facility or activity designs must adequately address the issues arising from locating in an area of potentially more vulnerable groundwater resource." This request suggests that the DEP knew the importance of the risk of sinkholes and should have recognized this as a significant modification to Rockwool's permit, triggering the requirement for either an official modification or a new application. Either action would have required public notice and a hearing.

22. On 10/16/18, Rockwool submitted the "Rockwool Ran-5 Project Supplemental Sinkhole Repair Procedure."

23. On 10/19/18, the DEP approved the structural sinkhole repair plan submitted by Rockwool. According to Environmental Resource Management ("ERM"), a consultant for Rockwool, and in response to DEP comment 6 of NOV # W18-19-047-TAG, "[t]he facility has reported the identified sinkhole to the WVDEP and made WVDEP aware of other features identified. The sinkhole repair procedure has been further developed to incorporate WVDEP guidance and was submitted for final WVDEP review on October 18, 2018." The plan was approved for implementation by WVDEP on October 19, 2018."

24. On 10/31/18, Rockwool withdrew its application for reissuance of its registration under the 2012 Permit. At that point, Rockwool had been performing construction work at the site for at least one (1) year under the 2012 General Permit Registration, but, upon information and belief, had no application for a renewal registration pending, despite having additional work to do. Rockwool should have notified the DEP, and the DEP should have provided for public notice and comment.

25. On 01/01/19, the DEP issued a letter to all permits registrants extending the expiration date of the 2012 Permit to March 31, 2019.

26. On 01/10/19, the DEP released its revised Construction Stormwater General Permit, to be effective 02/09/19. The DEP advised that any entity, to include Rockwool, covered under the 2012 Permit, who had been registered for work prior to 02/09/18, had ninety (90) days therefrom to submit a full application for continued coverage, or submit a notice of termination.

27. Upon information and belief, Rockwool filed a Notice of Termination which the DEP subsequently denied on 05/08/19 when an inspection determined that grading was on-going at the site.

28. On 02/8/19, Jefferson Asphalt Products filed an appeal of the Revised Construction Stormwater General Permit with the EQB, and requested a stay of the of the revised permit conditions. On 04/2/2019, the Contractors Association of West Virginia joined this appeal. Rockwool was not party to this appeal.

29. On 04/29/19, the EQB granted the requested stay, effective from the permit effective date of 02/09/19 to sixty (60) days past the date of stay, or 06/28/19. Conditions from the previous 2012 Permit applied during the stay. The stay applied to Rockwool.

30. Rockwool did not apply for continuation of coverage under the new 2019 Construction Stormwater General Permit "the 2019 Permit" within ninety (90) days of the permit taking effect.

31. The failure of Rockwool to reapply in a timely manner was acknowledged by Rockwool and the DEP in the Responsiveness Summary for WVR108876 Reiusse, as Comment 42 states "Roxul USA Inc. failed to apply in a timely manner (90 days from February 10, 2019)". DEP's Response 42 is: "Acknowledged".

32. On 05/31/19, a settlement between the DEP, Jefferson Asphalt Products and the Contractors Association of West Virginia was reached regarding the proposed 2019 Permit. This settlement was approved by the EQB, and public comment was accepted from 08/09/19 through 09/13/19. This revision allowed permittees with projects authorized under the 2012 Permit before 02/09/19 to modify or complete remaining authorized construction activities under the 2012 Permit terms and conditions for up to an additional (eighteen)18 months. The EPA was provided (ninety) 90 days to comment on the proposed 2019 Permit.

33. On 06/21/19, Rockwool submitted an application for reissuance of its registration under the 2019 Permit, over one (1) year past the applicable deadline.

34. On 09/19/2019, the DEP issued public notice for Rockwool's registration application to work under the 2019 Permit and Rockwool's registration application under the Multi-Sector Stormwater General Permit.

35. On 10/23/19, public hearing was held with public comment in opposition to the above-mentioned permit applications.

36. On 11/01/19, the EPA objected to the proposed 2019 Permit, directed that the DEP could not issue its revised permit until it cleared the EPA objections, and further gave the DEP ninety (90) days to do so. The EPA specifically noted that no company, which included Rockwool, may continue to operate under the 2012 Permit.

37. On 02/06/20, Rockwool provided the information requested by the DEP to update its permit application.

38. On 02/25/20, the DEP issued Rockwool its registration under the 2019 Permit. *See* Exhibit B.

Specific Objections

Appellants assert that the DEP acted in an arbitrary and capricious manner, and/or in clear violation of state and federal law as follows:

39. The initial DEP permit review was minimal and not in accordance with prevailing law. Specifically, the DEP only took eleven (11) days to review a complex permit application; the DEP only proposed four (4) questions for additional information; the DEP did not ask any questions about the site risks posed by construction on Karst hydrogeology. The DEP should have required that Rockwool have a sinkhole mitigation plan before construction began, and the DEP should have required Rockwool to have an appropriate topographical map at the time construction began.

40. This most current registration allows for inappropriate stormwater handling for the hydrogeologic siting of the plant. The DEP did not require Rockwool to follow the guidance documents of the DEP stormwater design development in Karst. The failure to have an adequate plan puts the groundwater resources, including the wells of the Appellants, in severe danger, as well as poses real risks to the management of stormwater runoff into the Chesapeake Bay watershed. The current stormwater handling also endangers the Madison Cave Isopod, an endangered species.

41. Section C.2 of 2012 Permit required that “[f]f the permittee seeks to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit or General Permit registration as detailed in permit reissuance.” This is relevant because the Appellant asserts that the permittee failed to reapply in a timely manner and the DEP failed to issue a notice of violation for this failure.

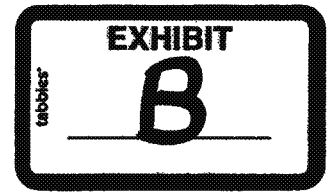
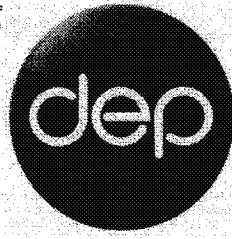
42. Section C.9 of the 2012 Permit required that “[w]here the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall immediately submit such facts or information.”

43. The DEP did not require Rockwool to correct the Limit Of Disturbance (LOD) on the original stormwater permit. If the DEP had required Rockwool to appropriately report the LOD accurately (>100 acres), then Rockwool would have had to go to public notice and comment prior to the issuance of the permit. Public comment could have addressed, at least, the following issues: Rockwool not following the guidance documents on stormwater management and design in Karst, the dangers to the ground water, an inappropriate topographical map and unidentified buried utilities. If the public had had the opportunity to give comment originally, the DEP would

have had the opportunity to require Rockwool to fix these inadequacies or determine that the location was inappropriate for the facility.

44. The DEP did not require Roxul USA Inc. to reapply for registration under the Construction Stormwater General Permit at the appropriate time. The permit conditions require that if the conditions of the permit significantly change then the company is required to reapply; in fact, the conditions of the permit did significantly change and should have required a reapplication of the permit. Specifically, the LOD increased to over 100 acres the day following the issuance of the registration. The right-of-way area conveyed to Rockwool by Jefferson Orchards increased the LOD to over 100 acres. Additionally, when the project went over one (1) year, they should have had to reapply as this is a significant change. The notice of termination (NOT) inspection occurred well over one (1) year and it reports that grading is still happening. Finally, it was a significant change to the permit when the DEP required Rockwool to write a sinkhole mitigation plan, and should have led to a re-application.

45. The failure of the DEP to require corrected or more specific information, in a timely manner and pursuant to its own deadlines, allowed Rockwool to initially obtain the registration in October, 2017, without the need for public notice and comment, and then continue to hold such registration, despite the significant changes as outlined herein above, through the issuance of the 02/25/20 Notice, without public notice and comment. It was only following Rockwool's most recent, and mandated, application to operate under the 2019 permit that the public was finally allowed an opportunity to comment. As such, the issues raised herein were not adequately address by the DEP in any formal process.



Division of Waster and Water Management
601 57th Street SE
Charleston West Virginia 25304-2345
Phone: 304-926-0495

Fax: 304-926-0496

Austin Caperton, Cabinet Secretary
dep.wv.gov

February 25, 2020

ROXUL USA, INC.
KENNETH J. CAMMARATO
4594 CAYCE ROAD
BYHALIA, MS 38611

Re: General Permit Registration No.
WVR108876, Jefferson Co.
Roxul USA
Acres (98.5)

Dear Permittee:

You are now authorized to operate under General Permit No. WV0115924 to discharge stormwater associated with construction activities. This registration form should be kept with your copy of the General Permit. You should carefully read the contents of the permit and become familiar with all requirements needed to remain in compliance.

Although you should be aware of all the terms and conditions of this permit, we wish to advise you of the following important requirements:

1. In accordance with Section II.H. of the General Permit, you have developed a complete Storm Water Pollution Prevention Plan. This plan is to be retained on site and be available for review by the Director or the Director's authorized representative as of the date of your coverage by the General Permit, which is the date of this letter.

2. The erosion control measures approved by this Agency for this project shall be maintained in proper condition to individually and collectively perform the functions for which they were designed. In order to ensure the efficiency and proper maintenance of these measures, the permittee shall make sufficiently frequent, periodic inspections to detect any impairment of the designed stability, capacity or environmental requirements of the approved measures. The permittee shall take immediate steps to correct any such impairment found to exist.

Promoting a healthy environment.

Roxul USA, Inc.

Page -2-

February 25, 2020

3.If this Stormwater Pollution Prevention Plan (SWPPP) proves to be ineffective in controlling erosion and the sediment in storm water discharges associated with industrial/construction activities, or site conditions change, the Permittee shall amend the

SWPPP and install appropriate sediment and/or control devices in accordance with Section

II.H. of this permit and the application instructions.

4. Final stabilization means disturbed areas shall be covered by the appropriate permanent protection. Final stabilization includes: pavement; compacted gravel; permeable pavement/pavers; buildings; stable waterways (riprap, concrete, grass or pipe); a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground; stable outlet channels with velocity dissipation which directs site runoff to a natural water course; and any other approved structure or material.

You will be invoiced for your annual permit fees one month prior to the anniversary date of today's date. Failure to submit the annual fee within 90 days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect.

This Project has been to Public Notice and this Site Registration will expire at the end of the General Permit term, February 9, 2024. If the project has not been completed by that time, a Re-issuance is required.

Issuance of this registration does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, state or local law or rules.

The validity of this General Permit Registration is contingent upon payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

Your efforts toward preventing the degradation of our natural resources are greatly appreciated. If you have any questions, please contact **Larry.D.Board** at (304) 926-0499 ext. 43883 or by email at Larry.D.Board@wv.gov

Kathy Emery, P.E.

Acting Director

WV DEP-Division of Water & Waste Mgt.

Promoting a healthy environment

Roxul USA, Inc.

Page -2-

February 25, 2020

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Promoting a healthy environment

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**JEFFERSON COUNTY FOUNDATION, INC.,
CHRISTINE L. WIMER, KAREN MICHELLE FREER,
and GAVIN PERRY,**

Appellants,

v.

Appeal No. _____

**KATHY EMERY, ACTING DIRECTOR,
DIVISION OF WATER & WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,**

Appellee.

CERTIFICATE OF SERVICE

I, Christopher P. Stroeck, Esq., counsel for Appellants, do hereby certify that I have served a true copy of the foregoing NOTICE OF APPEAL upon the following parties by United States mail, postage prepaid, this 26th day of March, 2020:

Jackie Shultz, Clerk
Environmental Quality Board
601 57th Street, SE
Charleston, WV 25304

WVDEP - OFFICE OF LEGAL SERVICES
601 57th Street, SE
Charleston, WV 25304

WVDEP
ACTING DIRECTOR, DIVISION OF WATER AND WASTE MANAGEMENT
601 57th Street, SE
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Christopher P. Stroeck, Esq.